99th Congress, 2d Session - - - - - - - - - - House Document 99-166

VETO OF H.R. 2466

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

HIS VETO OF H.R. 2466, A BILL TO MAKE MISCELLANEOUS CHANGES IN LAWS AFFECTING THE UNITED STATES COAST GUARD, AND FOR OTHER PURPOSES

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41. 1/7:

To the House of Representatives:

I am returning herewith without my approval H.R. 2466, a bill "To make miscellaneous changes in laws affecting the United States Coast Guard, and for other purposes."

This legislation was originally intended to make technical and editorial corrections to subtitle II of title 46 of the United States Code. These corrections were necessitated by errors made in the codification of that title in 1983. This bill contains sections that I do support; however, provisions were added that I simply cannot support.

Improving the management of the Federal government has been, and remains, a fundamental goal of my Administration. But close cooperation between our branches of government is critical if we are to conduct our affairs in a businesslike fashion. Far from giving the Executive branch requisite flexibility to manage efficiently, it creates significant new impediments and contains unwarranted private relief provisions that would set highly undesirable precedents.

For example, the bill would require that any funds expended under the Truman-Hobbs Act by the Coast Guard to alter the Burlington-Northern Railroad bridge be subject to the requirements of the Davis-Bacon Act, adding approximately $1.5 million to the cost of the project. It would prohibit the trial contracting out of certain aids to navigation functions on the Intracoastal Waterway in New Jersey, significantly diminishing the scope of this project. It would establish two unnecessary advisory committees, and exempt certain Coast Guard facilities from personnel ceilings.

It would also reimburse the owners of a bridge in Texas for costs of alterations that under current law are nonreimbursable. Finally, the bill would grant a specific vessel an inappropriate exception to the Merchant Marine Act of 1936, relieving that vessel of its statutory duty to repay a construction differential subsidy. Both of these provisions would discriminate unfairly and inequitably against those similarly situated. At a time when we are taking difficult steps to reduce the budget deficit, this strikes me as especially unwise.

For these reasons I am compelled to return H.R. 2466 without my approval.

RONALD REAGAN.

THE WHITE HOUSE, *February 14, 1986.*

Ninety-ninth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the twenty-first day of January, one thousand nine hundred and eighty-six

An Act

To make miscellaneous changes in laws affecting the United States Coast Guard, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subtitle II of title 46, United States Code, is amended as follows:

(1) In section 2101(14)(C), strike "Material" and substitute "Materials".

(2) Section 2101(21) is amended as follows:

(A) In subclause (A)(ii), strike "crewmember." and substitute "crewmember or other individual engaged in the business of the vessel who has not contributed consideration for carriage on board the vessel.".

(B) Strike subclause (B) (v)–(vii) and substitute the following:

"(v) a guest on board a vessel being operated only for pleasure who has not contributed consideration for carriage on board; or

"(vi) an individual on board a towing vessel of at least 50 gross tons who has not contributed consideration for carriage on board.".

(C) At the end, add the following new subclause:

"(F) on a sailing school vessel, means an individual carried on the vessel except—

"(i) the owner or representatives of the owner;

"(ii) the master or a crewmember engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for services;

"(iii) an employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter;

"(iv) an employee of the demise charterer of the vessel engaged in the business of the demise charterer;

"(v) a guest on board the vessel who has not contributed consideration for carriage on board; or

"(vi) a sailing school instructor or sailing school student.".

(D) Strike "or a sailing school vessel," in clause (B).

(3) In section 3302(i)(5), strike "charter" and substitute "charterer".

(4) At the end of section 3302, add the following new subsection:

"(k) Only the boiler, engine, and other operating machinery of a steam vessel that is a recreational vessel of not more than 65 feet overall in length are subject to inspection under section 3301(9) of this title.".

(5)(A) Section 3304 is amended as follows:

(i) In the section catchline, strike "Carrying" and substitute "Transporting".

(ii) In subsection (a), strike "carrying cargo that carries" and "vessel." and substitute "transporting cargo that transports" and "vessel if the vessel is otherwise subject to inspection under this chapter.", respectively.

(iii) In subsection (b), strike "Before an individual in addition to the crew is carried" and substitute "Except when subsection (e) of this section applies, before an individual in addition to the crew is transported".

(iv) In subsection (c), strike "The privilege" and substitute "A privilege".

(v) Add at the end the following new subsection:

"(e) The Secretary may by regulation allow individuals in addition to the crew to be transported in an emergency or under section 2304 of this title.".

(B) In item 3304 in the analysis of chapter 33, strike "Carrying" and substitute "Transporting".

(6) In section 3318(f), before clause (1), strike "then" wherever it appears and substitute "than".

(7)(A) Section 3503 is amended as follows:

(i) Insert "(a)" at the beginning of the section.

(ii) Strike the last sentence and substitute "Before November 1, 1993, this section does not apply to a vessel in operation before January 1, 1968, and operating only on the inland rivers.".

(iii) Add at the end the following:

"(b)(1) When a vessel is exempted from the fire-retardant standards of this section—

"(A) the owner or managing operator of the vessel shall notify prospective passengers that the vessel does not comply with applicable fire safety standards due primarily to the wooden construction of passenger berthing areas;

"(B) the owner or managing operator of the vessel may not disclaim liability to a passenger for death, injury, or any other loss caused by fire due to the negligence of the owner or managing operator; and

"(C) the penalties provided in section 3504(c) of this title apply to a violation of this subsection.

"(2) The Secretary shall prescribe regulations under this subsection on the manner in which prospective passengers are to be notified.".

(B) Until the regulations required by clause (7) of this section become effective, the owner or managing operator shall notify prospective passengers in all promotional literature and on each ticket that the vessel does not comply with those standards due primarily to the wooden construction of passenger berthing areas.

(8) In section 3714(a)(4), strike "charter" and substitute "charterer".

(9) Section 4308 is amended by striking "operator" wherever it appears and substituting "individual in charge".

(10) In section 7111, strike "Part" and substitute "part".

(11) In section 7312(e), strike "able seaman-limited" and substitute "able seamen-limited".

(12) Section 8104(k) is amended by striking "watchers" and substituting "watches".

(13) In section 8502(a)(4)(A), strike "Part" and substitute "part".

(14) Chapter 89 is amended as follows:

(A) In item 8903 in the chapter analysis, strike "Uninspected" and substitute "Self-propelled, uninspected".

(B) In the catchline of section 8903, strike "Uninspected" and substitute "Self-propelled, uninspected".

(C) In the text of section 8903, strike "An" and substitute "A self-propelled,".

(15) In section 10709(a)(1), before clause (A)—

(A) strike "then $1,500 in value, and" and substitute "than $1,500 in value, the court,"; and

(B) strike "wages, the court" and substitute "wages,".

(16) Section 12122(a) is amended by adding at the end the following sentence: "Each day of a continuing violation is a separate violation.".

(17) In section 13102(a)(4), strike "coordinate carrying the State" and substitute "coordinate carrying out the State".

(18) Section 13104(b) is amended by inserting after "Secretary" the words "for State recreational boating safety programs".

(19) Chapter III is amended as follows:

(A) At the end of the chapter analysis, add the following new item:

"11112. Master's lien for wages.".

(B) At the end of the chapter, add the following new section:

"§ 11112. Master's lien for wages

"The master of a documented vessel has the same lien against the vessel for the master's wages and the same priority as any other seaman serving on the vessel.".

SEC. 2. (a) The Coast Guard may enter into a lease in excess of one fiscal year to acquire a site on the State pier in New Bedford, Massachusetts, for construction of maintenance assistance team and vessel support facilities on that pier.

(b) Any lease under this section is effective only to the extent that amounts are provided for in appropriations laws.

(c) Notwithstanding section 322 of the Act of June 30, 1932 (40 U.S.C. 278a), and beginning in fiscal year 1986, the Coast Guard may spend appropriated amounts for the construction of fixed facilities and improvements on that portion of the State pier leased from Massachusetts for the use of a maintenance assistance team and Coast Guard vessels.

SEC. 3. Notwithstanding any other law, the Coast Guard Yard, Curtis Bay, Maryland, and the Coast Guard Aircraft Repair and Supply Center, Elizabeth City, North Carolina, are exempt from statutory and administrative personnel ceilings through September 30, 1988.

SEC. 4. The body of water known as Lawyer's Ditch located at block 5000 in the city of Newark, County of Essex, New Jersey, is declared to be a nonnavigable waterway of the United States within the meaning of the General Bridge Act of 1946 (33 U.S.C. 525 et seq.).

SEC. 5. Notwithstanding the last sentence of section 81 of title 14 of the United States Code, the Coast Guard may not, except for the installation of fixed aids to navigation, carry out by contract the determination of the location, or the placement, of aids to maritime navigation in the Intracoastal Waterway in New Jersey.

SEC. 6. The Coast Guard may enter into any agreement or letter of intent with a municipal utility within the Seventeenth Coast Guard District to provide electricity to a Coast Guard facility without complying with the provisions of section 14 of Public Law 98-557.

SEC. 7. (a) There is established a National Offshore Vessel Operators Safety Advisory Committee (hereinafter in this section referred to as the "Committee"). The Committee shall advise, consult with, and make recommendations to the Secretary of the department in which the Coast Guard is operating (hereinafter in this section referred to as the "Secretary") on matters relating to the safety aspects of offshore oil, gas, and other mineral operations subject to regulation by the Secretary. The Secretary shall, whenever practicable, consult the Committee concerning proposed or desirable actions affecting the safety of such offshore operations. Any advice or recommendation made by the Committee to the Secretary shall reflect the independent judgment of the Committee on the matter concerned. The Committee is authorized to make available to Congress any information, advice, and recommendations which the Committee is authorized to give to the Secretary. The Committee shall meet at the call of the Secretary, but in any event not less than once during each calendar year. All proceedings of the Committee shall comply with the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.).

(b)(1) The Committee shall consist of fifteen members, who have particular expertise, knowledge, and experience regarding the transportation and other technology, equipment, and techniques that are used, or are being developed for use, in the exploration for, or the recovery of, offshore oil, gas, or other mineral resources, as follows:

(A) two members representing enterprises engaged in the production of oil, gas, or other mineral resources, except that not more than one member may represent companies included on the list of restricted joint bidders prepared by the Department of the Interior;

(B) two members representing enterprises specializing in offshore drilling;

(C) two members representing enterprises specializing in the supply of offshore oil, gas, or other mineral exploration or recovery operations by water;

(D) three members representing general support services for offshore oil and gas activities, including construction, diving, geophysical, and helicopter services;

(E) two members representing individuals employed in offshore operations;

(F) two members representing environmental interests; and

(G) two members representing the general public.

(2) The Secretary shall appoint the members of the Committee after first soliciting nominations by notice published in the Federal Register. The Secretary may request the head of any other Federal agency or department to designate a representative to advise the Committee on matters within the jurisdiction of that agency or department.

(3) The Committee shall elect, by majority vote at its first meeting, one of the members of the Committee as the Chairman and one of the members as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in, the Office of the Chairman.

(4) Terms of members appointed to the Committee shall be for three years, except that the terms of those members first appointed under subsections (c)(1) (A), (B), and (C) shall be for two years. The Secretary shall, not less often than once a year, publish notice in the Federal Register for solicitation of nominations for membership on the Committee.

(c)(1) Members of the Committee who are not officers or employees of the United States shall serve without pay and members of the Committee who are officers or employees of the United States shall receive no additional pay on account of their service on the Committee. While away from their homes or regular places of business, members of the Committee may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are considered necessary for the conduct of its business. There are authorized to be appropriated such sums as may be necessary to implement the provisions of this section.

(2) Unless extended by subsequent Act of Congress, the Committee shall terminate five years from the date of enactment of this section.

SEC. 8. Bayou Lafourche, in the State of Louisiana, between Canal Boulevard, city of Thibodaux, Parish of Lafourche and the Southern Pacific Railroad bridge crossing the bayou, city of Thibodaux, Parish of Lafourche, is hereby declared to be a nonnavigable waterway of the United States within the meaning of the General Bridge Act of 1946 (33 U.S.C. 525 et seq.).

SEC. 9. Notwithstanding sections 12105, 12106, 12107 and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), as applicable on the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation for the following vessels: MARILYN, Maryland registration number MD 3533 AA; ROYAL STAR, Michigan registration number MC 9707 J; ALASKAN SHORES, United States official number 603879; SHEARWATER, United States official number 260827; GYPSY ROSE, California registration number CF 4291 HF; ELIMINATOR, United States official number 507572; PUKA KAI, United States official number 677462; LOBSTER HOUSE, Panama registration number 494-PEXT; JANE E, Bahamian official number 315924; and DIANE M., Bahamian official number 315925, except that such vessels JANE E and DIANE M. may be operated under such documentation only in the waters of the Atlantic Ocean and the Gulf of Mexico.

SEC. 10. Any use or expenditure of funds by the Coast Guard related to the alteration of the Burlington-Northern Railroad Bridge at mile 6.9 on the Willamette River in Portland, Oregon shall be subject to the first six sections of the Act of March 3, 1931 (40 U.S.C. 276a through 276a-5).

SEC. 11. Section 2(a) of the Act entitled "An Act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes", approved September 15, 1980 (21 U.S.C. 955b(a)), is amended by insert-

ing immediately before the period the following: ", except that an event otherwise qualifying as an arrangement under such section does not lose that qualification by the fact that consent to, or the terms of, such arrangement are communicated by radio, telephone, or other similar means, or by how specific such arrangement is as to the vessel to which such arrangement applies".

SEC. 12. The Coast Guard may enter into a cost-sharing arrangement with the city of Cape May, New Jersey under which the city of Cape May will provide necessary roadway improvement on and along Pennsylvania Avenue between Pittsburg and Buffalo Avenues, as abutted by housing owned by the Coast Guard. For purposes of entering into such an arrangement, the Coast Guard may expend from previously-appropriated funds an amount not to exceed $200,000 on a non-recurring basis.

SEC. 13. Section 2103 of title 46, United States Code, is amended by striking all after "subtitle" the third time it appears and substituting ". The Secretary may prescribe regulations to carry out the provisions of this subtitle.".

SEC. 14. Section 4370(a) of the Revised Statutes of the United States (46 U.S.C. App. 316(a)) is amended—

(1) by striking all from "a certificate of registry," through "the Act of June 7, 1918, as amended (U.S.C., 1934 edition, Supp. IV, title 46, sec. 288)," and substituting "a certificate of documentation issued under sections 12106 or 12107 of title 46, United States Code,"; and

(2) by striking "a vessel of foreign registry, or a vessel in distress," and substituting "a vessel in distress".

SEC. 15. Section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702) is amended—

(1) in paragraph (6), (A) by striking the period at the end of subparagraph (B) and substituting a comma, and (B) by adding at the end thereof the following: "except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker. As used in this paragraph, 'chemical parcel-tanker' means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination, and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk."; and

(2) in paragraph (18), by striking all from the semicolon and substituting a period.

SEC. 16. (a) As used in this section, the term—

(1) "commercial fishing industry vessel" means a fishing vessel, fish processing vessel, or fish tender vessel, as those terms are defined in section 2101 of title 46, United States Code;

(2) "Committee" means the Commercial Fishing Industry Vessel Safety Advisory Committee established in subsection (b) of this section; and

(3) "Secretary" means the Secretary of the department in which the Coast Guard is operating.

(b) There is established a Commercial Fishing Industry Vessel Safety Advisory Committee as an advisory committee of the United States Government reporting to the Secretary.

(c)(1) The Committee shall advise, consult with, and make recommendations to the Secretary on matters relating to commercial fishing industry vessels, including—

(A) navigation safety;

(B) safety equipment and procedures;

(C) marine insurance;

(D) vessel design, construction, maintenance, and operation; and

(E) personnel qualifications and training.

(2) The Secretary, and the Secretary of Commerce, shall use the information, advice, and recommendations of the Committee in consulting with other agencies and the public or in formulating policy regarding commercial fishing industry vessels.

(3) The Committee shall meet at the call of the Secretary, but not less often than once during each calendar year.

(4) Any advice or recommendation made by the Committee shall reflect the independent judgment of the Committee on the matter concerned.

(5) The Committee may make available to Congress any information, advice, and recommendations which the Committee is authorized to give to the Secretary.

(d)(1) The Committee shall consist of seventeen members with particular expertise, knowledge, and experience regarding the commercial fishing industry, as follows:

(A) ten members from the commercial fishing industry who reflect a regional and representational balance, and have experience in the operation of commercial fishing industry vessels, or have experience as a crew member or processing line worker on a commercial fishing industry vessel;

(B) two members from each of the following:

(i) underwriters engaged in insuring commercial fishing industry vessels; and

(ii) the general public, including, whenever possible, a member of a national organization composed of commercial fishing industry vessel and marine insurance interests; and

(C) one member from each of the following—

(i) naval architects or marine surveyors;

(ii) manufacturers of fishing industry vessel equipment; and

(iii) education or training professionals related to commercial fishing industry vessel safety or personnel qualifications.

(2) At least once each year, the Secretary shall publish a notice in the Federal Register and in newspapers of general circulation in coastal areas soliciting nominations for membership on the Committee. After timely notice is published, the Secretary shall appoint the members of the Committee. A member may be reappointed to any number of terms.

(3) The term of a member is three years, except that—

(A) initially, one-third of the members shall serve a term of one year and one-third of the members shall serve a term of two years, to be determined by lot at the first meeting of the Committee;

(B) initially, terms may be adjusted to coincide with the Government's fiscal year; and

(C) if a vacancy occurs, the Secretary shall appoint a member to fill the remainder of the vacated term.

(4) The Committee shall elect one of its members as the Chairman and one of its members as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in the office of, the Chairman.

(5) The Secretary and the Secretary of Commerce shall, and any other interested agency may, designate a representative to participate as an observer with the Committee. These representatives shall, as appropriate, report to and advise the Committee on matters relating to commercial fishing industry vessels under the jurisdiction of their respective departments. The Secretary's designated representative shall act as executive secretary for the Committee and perform the duties specified in section 10(c) of the Federal Advisory Committee Act (5 U.S.C. App. 10(c)).

(e)(1) The Secretary shall, whenever practicable, except regarding issues which could compromise national security, consult with the Committee concerning the following actions affecting commercial fishing industry vessels—

(A) proposing legislation;

(B) proposing or publishing a regulation;

(C) authorizing or conducting research or a study; or

(D) taking any other major action of the United States Government relating to the Committee's purpose and duties as set forth in subsection (c)(1) of this section.

(2) Consultation with the Committee shall be deemed to satisfy all requirements of title 46, United States Code, for consulting with representatives of the private sector having experience in the operation of commercial fishing industry vessels.

(f)(1) Except as otherwise provided in paragraph (3) of this subsection, a member of the Committee, when attending meetings of the Committee or when otherwise engaged in the business of the Committee, shall serve without pay. While away from their homes or regular places of business, members of the Committee may be allowed travel or transportation expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

(2) Any payment made under this subsection shall not render a member of the Committee a member of the uniformed services (as defined in section 101(3) of title 37, United States Code), or an officer or employee of the United States for any purpose.

(3) A member of the Committee who is a member of the uniformed services or an officer or employee of the United States may not receive additional pay on account of such member's service on the Committee, but a member of the Committee who is a member of the uniformed services shall be allowed travel or transportation expenses under section 5703 of title 5, United States Code, unless such member is otherwise entitled to such expenses under any other provision of law.

(4) The Secretary shall furnish the Committee an executive secretary and such secretarial, clerical and other services as are necessary for the conduct of the Committee's business.

(g)(1) The Committee shall terminate on September 30, 1991.

(2) Two years prior to the date of its termination, the Committee shall submit to the Congress its recommendation as to whether the Committee should be renewed and continued beyond such termination date.

(h) There are authorized to be appropriated such amounts as may be necessary to carry out the provisions of this section.

SEC. 17. Notwithstanding the provisions of the Act entitled "An Act to authorize the Secretary of Commerce to sell two obsolete vessels to Coast Line Company and for other purposes", approved June 3, 1980 (Public Law 96-260; 94 Stat. 435), the Secretary of Transportation shall permit the vessels PICTOR, United States official number 243529, PROCYON, United States official number 244022, and ZELIMA, United States official number 248207, to be scrapped in the foreign market if—

(1) the purchaser of such vessels and the country in which such vessels are to be scrapped are acceptable to the Secretary of Transportation; and

(2) the seller of any such vessel agrees in writing to reimburse the United States a reasonable amount, acceptable to the Secretary of Transportation, of not less than one-half of the profits realized from such sale.

SEC. 18. Notwithstanding any other provision of law or any agreement with the United States Government, the vessels PAUL BUNYAN, United States official number 602272, and JOHN HENRY, United States official number 599294, may be sold to a foreign purchaser or purchasers if—

(1) the person desiring to sell the vessel submits to the Secretary of Transportation and the Secretary of the Navy a written offer under which the Secretary of Transportation may elect to acquire either or both vessels for the National Defense Reserve Fleet or the Secretary of the Navy may elect to acquire either or both vessels for the Ready Reserve Fleet, under the same terms and conditions as those offered by the foreign purchaser or purchasers; and

(2) neither Secretary elects to acquire the vessel within 60 days after the date on which a written offer is submitted to the Secretaries under paragraph (1) of this subsection.

SEC. 19. The Port of Houston Authority bridge over Greens Bayou approximately two and eight-tenths miles upstream of the confluence of Greens Bayou, Texas and the Houston Ship Channel is declared to be a lawful bridge for all purposes of the Act entitled "An Act to provide for the alteration of certain bridges over navigable waters of the United States, for the apportionment of the cost of such alterations between the United States and the owners of such a bridge, and for other purposes", approved June 21, 1940 (33 U.S.C. 511 et seq.). The Secretary of the department in which the Coast Guard is operating is authorized to reimburse the owner of the bridge for work done prior to the date of enactment of this section that would be the responsibility of the United States under the Act of June 21, 1940 (33 U.S.C. 511 et seq.) if performed after the date of enactment of this section, except that such reimbursement shall not exceed $450,000.

SEC. 20. Notwithstanding any other provision of law or of prior contract with the United States, the United States flag tug MOIR, official Coast Guard number 60018, shall not be subject to the requirements of section 506 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1156).

THOMAS P. O'NEILL, Jr.

Speaker of the House of Representatives.

STROM THURMOND

~~*Vice President of the United States and*~~
President of the Senate. pro tempore